

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-II)
KOLKATA**

**I.A.(IB)No.288/KB/2024
IN
C.P. (IB)/6(KB)2023**

*An application under Section 95 (1) Insolvency and Bankruptcy Code,
2016*

In the matter of:

Indian Bank

...Financial Creditor

Versus

Sanjay Prakash Bansal

...Personal Guarantor

And

Vinay Goenka

...Resolution Professional

Date of pronouncement:05.06.2024

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)

Appearance (via video conferencing/physically)

Mr. Santosh Kr. Ray, Adv.] For the Financial Creditor

Ms. Rituparna Sanyal, Adv.]

Ms. Zeba Khan, Adv.]

Ms. Muskan Saha, Adv.]

O R D E R

Per: D. Arvind, Member (Technical)

1. The Court Convened in a hybrid mode.

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2. This I.A.(IB)No.288/KB/2024 in C.P.(IB)/6(KB)2023 has been preferred by the Financial Creditor to seek initiation of Insolvency Regulation Process against the Respondent Personal Guarantor to Corporate Debtor Rule, 2019 (“Personal Guarantors Rules”) and Regulation 4(2) of IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 (‘Personal Guarantors Regulations’) in terms of Section 99 (1) of the Insolvency and Bankruptcy Code, 2016 read with applicable Regulation of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors), 2016.
3. The amount in default is Rs.21,45,46,851.16/- (Rupees Twenty One crores Fourty Five lakhs Fourty Six thousand Eight Hundred and Fifty one and sixteen paise only).
4. The application is complete as required under Section 95 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019.
5. It is to be noted that Hon’ble Supreme Court in the judgment of **Dilip B. Jiwrajka vs. Union of India & Ors. In WP (Civil) No. 1281 of 2021** dated 09.11.2023 has upheld the Constitutional Validity of the Sections 94 to 100 and the propositions that can be culled out from the Judgments inter-alia are as follows:

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- “i. No judicial adjudication is involved at the stages envisaged in Sections 95 to Section 99 of the IBC;*
- ii. The Resolution Professional appointed under Section 97 serves a facilitative role of collating all the facts relevant to the examination of the application for the commencement of the insolvency resolution process which has been preferred under Section 94 or Section 95. The report to be submitted to the adjudicatory authority is recommendatory in nature on whether to accept or reject the application;*
- iii. No adjudicatory function of Adjudicating Authority is contemplated at the admission stage. To read in such a requirement at that stage would be to rewrite the statute which is impermissible in the exercise of judicial review;*
- iv. The resolution professional may exercise the powers vested under Section 99(4) of the IBC for the purpose of examining the application for insolvency resolution and CP/IB/337/AHM/2020 12 of 17 to seek information on matters relevant to the application in order to facilitate the submission of the report*

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recommending the acceptance or rejection of the application;

- v. There is no violation of natural justice under Section 95 to Section 100 of the IBC as the debtor is not deprived of an opportunity to participate in the process of the examination of the application by the resolution professional;*
- vi. No judicial determination takes place until the adjudicating authority decides under Section 100 whether to accept or reject the application. The report of the resolution professional is only recommendatory in nature and hence does not bind the adjudicatory authority when it exercises its jurisdiction under Section 100;*
- vii. The adjudicatory authority must observe the principles of natural justice when it exercises jurisdiction under Section 100 to determine whether to accept or reject the application;*
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- viii. The purpose of the interim moratorium under Section 96 is to protect the debtor from further legal proceedings; and*

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*ix. The provisions of Section 95 to Section 100 of the IBC
are not unconstitutional as they do not violate Article
14 and A.”*

- 6.** The Applicant had proposed the name of the Insolvency Professional for appointment as Resolution Professional. In view of the above, Mr. Vinay Goenka, IBBI Registration No. IBBI/IPA-001/IP-P01770/2019-2020/12709, email ID: **taxhouseranchi@gmail.com**; was appointed as Resolution Professional, subject to his possessing a valid AFA, in exercise of the power conferred under Section 97 of the IBC, 2016 on this Authority.
- 7.** The Resolution Professional was directed to file declaration within seven days to the effect that he fulfils all the requirements for being appointed as Resolution Professional in the matter which he has given, and to file his report in terms of Section 97 in two weeks.
- 8.** The Resolution Professional Mr. Vinay Goenka has vide his report dated 08th February, 2024 has recommended admission of the personal guarantor in to the Insolvency resolution process. The relevant portion of his report has been extracted and appended below for the sake of convenience.



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III. RECOMMENDATION:

It is submitted that, the Application u/s 95 (1) of the IBC, 2016 has been filed by the Creditor and to submit the Report u/s 99 of the IBC 2016, I have examined the application and ascertained the satisfaction of requirements set out in Section 95 as under:

| Section | | Observations of the Resolution Professional |
|----------------|--|--|
| 95(1) | <i>A creditor may apply either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process under this section by submitting an application.</i> | The application u/s 95 of the IBC, 2016 has been filed by the Creditor - Indian Bank on 03.01.2023 for initiating an insolvency resolution process against the Personal Guarantor Mr. Sanjay Prakash Bansal. |



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| 95(2) | <i>A creditor may apply under sub-section (1) in relation to any partnership debt owed to him for initiating an insolvency resolution process against— (a) any one or more partners of the firm; or (b) the firm.</i> | Not Applicable |
| 95(3) | <i>Where an application has been made against one partner in a firm, any other application against another partner in the same firm shall be presented in or transferred to the Adjudicating Authority in which the first mentioned application is pending for adjudication and such Adjudicating Authority may give such directions for consolidating the proceedings under the applications as it thinks just.</i> | Not Applicable |



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| 95(4) | <i>An application under sub-section (1) shall be accompanied with details and documents relating to—</i> | |
| 95(4)(a) | <i>the debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application;</i> | <p>Debt owed by the Corporate Debtor M/s Ambootia Tea Exports Private Limited to the applicant Indian Bank is Rs. 21,45,46,851.16. The amount in default being Rs. 21,45,46,851.16.</p> <p>Mr. Sanjay Prakash Bansal had extended personal guarantee as evidenced by the deed of guarantee dated 05.05.2017 and 18.05.2018 submitted along with the application and marked as "A-6" and "A-16" respectively. The applicant has invoked the personal guarantee against Mr. Sanjay Prakash Bansal. However, the personal guarantor failed to repay the amount in default. Hence the debt owed by Mr. Sanjay Prakash Bansal to the applicant is Rs. 21,45,46,851.16.</p> |



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| 95(4)(b) | <i>Failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and</i> | The applicant Bank has duly issued the Demand notice dated 20.10.2022 under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate debtors) Rules 2019. The same was delivered to the guarantor on 31.10.2022. However, the guarantor did not make the payment of debt within fourteen days of receipt of notice, satisfying the requirement of Section 95(4)(b). |
| 95(4)(c) | <i>relevant evidence of such default or non-repayment of debt</i> | The applicant, Indian Bank has provided the copy of the Account Statement of the Corporate Debtor M/s. Ambootia Tea Exports Private Limited with certificate issued under Banker Book of Evidence Act, 1891. Further, the applicant Bank has also provided the acknowledgement of debt by the Corporate Debtor vide its letter dated 31.12.2019. The above satisfies the requirement set out in |

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| | | 95(4)(c). |
| 95(5) | <i>The creditor shall also provide a copy of the application made under sub-section (1) to the debtor.</i> | The Applicant, Indian Bank through Advocate on record served a copy of the application to Mr. Sanjay Prakash Bansal which was served by email on 28.12.2022 and again it was served by email on 20.12.2023 as evidenced by the copy of emails and affidavit provided to me. [ANNEXURE - D] |
| 95(6) | <i>The application referred to in subsection (1) shall be in such form and manner and accompanied by such fee as may be prescribed.</i> | The application was submitted in Form-C as prescribed under Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules 2019 accompanied with prescribed fee. |
| 95(7) | <i>The details and documents required to be submitted under sub-section (4) shall be such as may be specified.</i> | The application along with related documents were presented in Form C along with a fee of Two Thousand rupees as prescribed under Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for |

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| | | Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules 2019. |
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Further, the compliance set out in Section 99 of the IBC 2016 is reported as under:

| Section | REMARKS |
|--|---|
| <p>99(1)</p> <p><i>The RP shall examine the application referred u/s 94 or 95 within 10 days of appointment and submit a report to Adjudicating Authority for the approval/rejection of the application;</i></p> | <p>The present report is prepared in compliance with the requirements of Section 99(1) of the Code.</p> |
| <p>99(2)</p> <p><i>Where the application has been filed under Section 95, the resolution professional may require the debtor to prove repayment of the debt claimed as unpaid by the creditor by furnishing –</i></p> <p><i>Evidence of electronic transfer of the unpaid amount from the bank account of the debtor;</i></p> <p><i>Evidence of encashment of a cheque issued by the debtor; or</i></p> | <p>It is submitted that, an email to the Personal Guarantor, Mr. Sanjay Prakash Bansal, was sent on 18.01.2024 requesting him to provide the proof for repayment of debt as provided u/s 99(2) of IBC 2016. [ANNEXURE – F.]</p> <p>The guarantor has not responded to the email.</p> <p>Furthermore, the Indian Bank has confirmed that</p> |



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| | <i>a signed acknowledgement by the creditor accepting receipt of dues.</i> | Mr. Bansal has not made any payment. [ANNEXURE – E.] |
| 99(3) | <i>Where the debt for which an application has been filed by a creditor is registered with the information utility, the debtor shall not be entitled to dispute the validity of such debt.</i> | Debt not disputed by the Debtor. |
| 99(4) | <i>For the purposes of examining an application, the resolution professional may seek such further information or explanation in connection with the application as may be required from the debtor or the creditor or any other person who, in the opinion of the resolution professional, may provide such information.</i> | The RP vide his email dated 18.01.2024 sought the details of repayment of Debt by the personal guarantor and further required the latest statement. [ANNEXURE E]. Indian Bank through its email dated 19.01.2024 responded to the email of RP and provided the necessary details. [ANNEXURE E]. |
| 99(5) | <i>The person from whom information or explanation is sought under sub-section (4) shall furnish such information or explanation</i> | All information or explanation was called for submission within seven days of receipt of the request. However, the |

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| | <i>within seven days of receipt of the request.</i> | Guarantor did not respond till the date of preparation of this report. |
| 99(6) | <i>The resolution professional shall examine the application and ascertain that- The application satisfies the requirements set out in Section 94 and 95; The applicant has provided information and given explanation sought by the resolution professional under sub-section (4).</i> | The application has been duly examined. It is submitted that, as provided in Section 99(6) of IBC 2016, the applicant has provided information and given explanation sought u/s 99(4) except the record of networth statement of the Personal Guarantor and registration with Information Utility. The applicant has evidenced that the balance outstanding of Rs 21,45,46,851.16 as on 20.10.2022 and no repayment received from Mr. Sanjay Prakash Bansal, Personal Guarantor after issue of Demand Notice in Form - B. [ANNEXURE - E] |
| 99(7) | <i>After examination of the application under sub-section (6), he may recommend acceptance or</i> | It is submitted that the application satisfies the requirements of the provisions of Section 95 of |

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| | <i>rejection of the application in his report.</i> | the IBC 2016 and as required to be examined under Section 99(6) of the Code. It is further submitted that based on examination of the present application, it is recommended to be admitted under Section 100 of the Code. The Hon'ble NCLT may pass appropriate orders in this regard. |
| 99(8) | <i>Where the resolution professional finds that the debtor is eligible for a fresh start under Chapter II, the resolution professional shall submit a report recommending that the application by the debtor under Section 94 be treated as an application under Section 81 by the Adjudicating Authority.</i> | Not Applicable |
| 99(9) | <i>The resolution professional shall record the reasons for recommending the acceptance or rejection of the application in the</i> | It is submitted that the present report is being presented under Section 99(7) of the Code to this Hon'ble NCLT with a |



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| | <i>report under sub-section (7).</i> | recommendation of accepting the present application as the Personal Guarantor/debtor has failed repay the debt due to the Creditor and the application satisfies the requirements of section 95 of the Code. |
| 99(10) | <i>The resolution professional shall give a copy of the report under sub-section (7) to the debtor or the creditor, as the case may be.</i> | It is submitted that the requirement of providing a copy of this report prepared under Section 99(7) of the Code to the creditor has been complied. |

In the opinion of the RP, the application made by Indian Bank before the Hon'ble National Company Law Tribunal, Kolkata to initiate Insolvency Resolution Process against Mr. Sanjay Prakash Bansal, the personal guarantor of the Corporate Debtor, M/s Ambootia Tea Exports Private Limited u/s 95 of the Insolvency and Bankruptcy Code, 2016 is **admissible**. The Hon'ble NCLT may pass appropriate order u/s 100 of IBC, 2016 in C.P. (IB)/6(KB)2023 for admission of the application. 

9. The Personal Guarantor has neither entered appearance despite repeated opportunities has nor refuted the statements in the report of Resolution Professional.
10. We have considered the report and perused the details of claim indicated therein.
11. We are satisfied with the recommendation of the Resolution professional to admit the application.

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12. In absence of any dispute or controversion by the Personal Guarantor, this application is admitted with the following directions:

(1) Since the application is **admitted under Section 100**;

(2) **In terms of Section 101 :**

When the application is admitted under section 100, a moratorium shall commence in relation to all the debts and shall cease to have effect at the end of the period of one hundred and eighty days beginning with the date of admission of the application or on the date the Adjudicating Authority passes an order on the repayment plan under section 114, whichever is earlier.

(3) **During the moratorium period—**

(a) any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed;

(b) the creditors shall not initiate any legal action or legal proceedings in respect of any debt; and

(c) the debtor shall not transfer, alienate, encumber or dispose of any of his assets or his legal rights or beneficial interest therein;

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- (4) Where an order admitting the application under section 96 has been made in relation to a firm, the moratorium under sub-section (1) shall operate against all the partners of the firm.
- (5) The provisions of this section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (6) IRP is directed to cause a public notice on behalf of the Adjudicating Authority and Act in terms of Section 102, 103, 104 of the Code, to cause public notice, invite claims from creditors, list of creditors etc and hold regular meeting.

102. Public notice and claims from creditors:

- (1) The Adjudicating Authority shall issue a public notice within seven days of passing the order under section 100 inviting claims from all creditors within twenty-one days of such issue.
- (2) The notice under sub-section (1) shall include—
- (a) details of the order admitting the application;
 - (b) particulars of the resolution professional with whom the claims are to be registered; and
 - (c) the last date for submission of claims.
- (3) The notice shall be—

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- (a) published in at least one English and one vernacular newspaper which is in circulation in the state where the debtor resides
- (b) affixed in the premises of the Adjudicating Authority; and
- (c) placed on the website of the Adjudicating Authority.

103. Registering of claims by creditors:

- (1) The creditors shall register claims with the resolution professional by sending details of the claims by way of electronic communications or through courier, speed post or registered letter.
- (2) In addition to the claims referred to in sub-section (1), the creditor shall provide to the resolution professional, personal information and such particulars as may be prescribed.

104. Preparation of list of creditors:

- (1) The resolution professional shall prepare a list of creditors on the basis of—
 - (a) the information disclosed in the application filed by the debtor under section 94 or 95, as the case may be;
 - (b) claims received by the resolution professional under section 102.

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(2) The resolution professional shall prepare the list mentioned in sub-section (1) within thirty days from the date of the notice

13. In terms of the above, C.P. (IB)/6(KB)2023 is, thus, **admitted**.

I.A.(IB)No.288/KB/2024 is **disposed of**.

14. List this matter for consideration on **22.07.2024**.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This Order signed on this, the 05th day of June, 2024.

SG (Steno)